THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EAMONN FLYNN

Appeal No. 95-2102
Application No. 08/076,160[1]

ON BRIEF

Before URYNOWICZ, HAIRSTON and FLEMING, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

---

[1] Application for patent filed June 14, 1993. According to the appellant, the application is a continuation of Application No. 07/853,579, filed March 18, 1992, now abandoned.

This is an appeal from the final rejection of claims 20 through 25. In an Amendment After Final (paper number 8), claims 20 and 23 were amended.[2]

The disclosed invention relates to control of the channels on a television and to control of a rotary antenna motor with the same signal transmitted from a wireless remote control channel selector.

Claim 20 is illustrative of the claimed invention, and it reads as follows:

20. A control unit for controlling a rotary motor driven antenna for use with a T.V. in which the channels of the T.V. are selected by signals transmitted by a wireless remote control channel selector, said control unit having a microprocessor, said microprocessor having a programmable random access memory to store in associated relation information representing the appropriate desired antenna position for each desired T.V. channel to be selected by each signal transmitted by the remote control channel selector and information representing the transmitted signal for which the desired antenna position has been stored, said control unit having a receiver to detect the said transmitted channel selector signals, said receiver being connected through said microprocessor to access from said random access memory the information for the appropriate desired antenna position for the T.V. channel selected by the channel selector signal detected, a power output circuit for connection to the antenna motor for rotating the antenna, a read only memory connected to said microprocessor and programmed to provide instruction

[2] The amendment failed to correct the dependency of claim 22 from canceled claim 2.

to said output circuit under control of said microprocessor to effect antenna rotation in an amount as computed by said microprocessor to rotate the antenna from an existing position to the appropriate position for the channel selected as detected by said control unit receiver and accessed from said random access memory.

The references relied on by the examiner are:

Carney	4,352,202	Sept. 28, 1982
Hornback	4,542,326	Sept. 17, 1985
Burton	4,803,412	Feb. 7, 1989

Claims 20 through 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hornback or Carey.

Claims 20 through 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hornback in view of Burton.

Reference is made to the final rejection, the briefs and the answers for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse all of the rejections.

Hornback discloses an antenna positioning system in which a channel selector 110 controls a television receiver 105 and the antenna rotor 120. Hornback does not describe the channel

selector 110 as a remote unit, and he uses electrical lines 112 to control the television and the antenna rotor (column 7, lines 9 through 12). Appellant argues (Brief, page 9) that:

> [A]ll the connections drawn as straight lines in Figure 1 of the [Hornback] drawings represent electrical conductors, including the line 12 [sic, 112] between the channel selector 110 and the microprocessor 12, and also including the connection between the channel selector 110 and the television receiver 105.

> In view of the above, Applicant states that Hornback does not teach a receiver on the antenna control unit detecting wireless signals from a remote control channel selector as recited in Applicant's claims.

The examiner acknowledges (Supplemental Answer, page 2) that "Hornback makes no reference to remote control devices." Even if we assume for the sake of argument that the channel selector 110 is a remote control device, it would still lack "wireless" signals as claimed by appellant. For this reason, the 35 U.S.C. § 102(b) rejection of claims 20 through 25 based upon the teachings of Hornback is reversed.

Carney discloses a remote control unit 10 that controls both an antenna motor 16, and a television receiver 13. Although the remote control unit 10 is in wireless communication with the television receiver 13, the remote control unit 10 is electrically wired to the motor control circuitry (Figure 1). Appellant argues (Brief, page 5) that "wireless" transmission between the remote control unit 10 and the antenna motor 16 is not possible in Carney because of the "direct electrical wire connection between the remote and the ACU [antenna control

unit]."[3] We agree. The 35 U.S.C. § 102(b) rejection of claims 20 through 25 based upon the teachings of Carney is reversed.

In the obviousness rejection of claims 20 through 25, the examiner indicates (Answer, page 3) that:

> The patent to Hornback discloses an automatic antenna positioning system comprising a channel selector 110, a microprocessor 12 and rotor control 120 for controlling the antenna. Hornback differs from the claims in that the claims recite a wireless remote control unit. However, the patent to Burton discloses a programmable electronic antenna rotator comprising a I.R.XMTR 200. Since the substitution of wired or wireless remote control is well known in the art; it would have been obvious to provide Hornback with the wireless remote control as taught by Burton.

Appellant and the examiner both agree that Burton's antenna is rotated under the control of the wireless remote control device 200, and that Burton does not disclose television receiver control with the wireless remote control device (Reply Brief, pages 2 through 4, and Supplemental Answer, page 2).

---

[3] The attached dictionary definitions of "remote control" indicate that control signals may be transmitted to a distant object via wires, sound, ultrasonics, light, radio or mechanical means.

Burton discloses a wireless remote control device for controlling the rotation of an antenna, but Hornback discloses neither a remote control device nor "wireless" communication of signals. In the absence of evidence in the record that "the substitution of wired or wireless remote control is well known in the art" (Answer, page 3), we can not agree with the examiner that "it would have been obvious to provide Hornback with the wireless remote control as taught by Burton" (Answer, page 3). Without the evidence, we would have to resort to impermissible hindsight to demonstrate the obviousness of the claimed invention (Reply Brief, page 2). Thus, the 35 U.S.C. § 103 rejection of claims 20 through 25 is reversed because the examiner has failed to present a prima facie case of obviousness.

DECISION

The decision of the examiner rejecting claims 20 through 25 under 35 U.S.C. § 102(b) and 35 U.S.C. § 103 is reversed.

REVERSED

STANLEY M. URYNOWICZ, Jr.)
Administrative Patent Judge)
)

KENNETH W. HAIRSTON Administrative Patent Judge	BOARD OF PATENT APPEALS AND INTERFERENCES
MICHAEL R. FLEMING Administrative Patent Judge	

Douglas S. Johnson
133 Richmond Street West, Suite 301
Toronto, Ontario, Canada, M5H 2L7

KWH/jrg

JENINE GILLIS

Appeal No. 95-2102
Serial No. 08/076,160

Judge HAIRSTON

Judge URYNOWICZ

Judge FLEMING

Received: 06 Aug 98

Typed: 08 Aug 98

DECISION: REVERSED

Send Reference(s): Yes No
or Translation(s)

Panel Change: Yes No

3-Person Conf. Yes No

Heard: Yes No

Remanded: Yes No

Index Sheet-2901 Rejection(s): _____

Acts 2: ____

Palm: ____

Mailed:

Updated Monthly Disk: ____

Updated Monthly Report:

___